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SUBJECT: GERARDI SUPREME COURT APPEAL

REF: A. 02 GUATEMALA 2649

1B. GUATEMALA 248

11. SUMMARY: On January 31, the Supreme Court Chamber of Appeals held the public audience of the latest appeal in the Gerardi case. The Archbishop's Office on Human Rights (ODHA) and the Public Ministry presented their appeals of the fourth appeals court's October 8, 2002 decision (Ref A) to annul the 2001 conviction and order a retrial. The Ambassador attended the judicial proceedings to show USG interest in justice being done in this case. The judges are expected to render a decision by February 6. End Summary.

12. Immediately after the Fourth Appeals Court's October 8, 2002, decision to annul the 2001 sentence condemning four men for the murder of Bishop Gerardi, the ODHA presented its appeal to the Supreme Court. The public reading of this appeal, as well as the oral arguments of both the defense and the prosecution, was held on January 31. Under Guatemalan law, the Supreme Court's Chamber of Appeals has three working days to come to a decision on the appeal.

13. The courtroom at the Supreme Court was two-thirds full, with the bulk of the audience being international human rights advocates and various Guatemalan civil society notables. The Public Ministry presented its appeal first, followed by the ODHA. Both parties argued that the overturning of the 2001 sentence was illegal because the Fourth Appeals Court did not review all of the evidence. They maintained that while Ruben Chanax Sontay's testimonies from preliminary depositions and the actual 2001 trial were contradictory, the rest of their evidence from the 2001 trial was solid.

14. All five defense lawyers, including representation for Gerardi's absolved maid, Margarita Lopez, presented their rebuttals following the prosecution. They argued that the appeals process is a necessary part of the justice system and that the Fourth Appeals Court's decision should be respected. Margarita Lopez's lawyer argued that even if a new trial was to take place, his client should be removed from the proceedings because she was absolved in the 2001 trial.

15. Immediately following the oral arguments, the court adjourned for three working days of deliberations, set to conclude on February 6. The decision will not be released in a public audience, but given privately to the parties.

16. The Ambassador greeted human rights activists and press after the judicial proceedings. His attendance at the trial was noted in all four leading dailies, and variations on his statements regarding support for justice in Guatemala were widely quoted. For example, El Periodico quoted the Ambassador as saying his presence at the Gerardi appeal was meant as a "sign of solidarity for justice in Guatemala." At a separate event, the Ambassador later met one of the four presiding justices, who was pleased by that explanation for the Ambassador's presence in court.

17. COMMENT: We find the recent death of a Gerardi case witness extremely troubling (Ref B), and will be alert to any signs that the intimidation of witnesses will impact the ruling. The ODHA appeal is based on legal technicalities over procedures followed by the lower appeals court, which ordered a retrial based on discrepancies in the testimony of one witness. If the original guilty verdict is confirmed, the defendants will return to prison. If the 2001 sentence is annulled, a retrial will put witnesses at risk and delay (if not set back) justice. While ODHA is confident its argument will save the earlier conviction, we